STATE OF MAINE
DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION
OFFICE OF SECURITIES

IN RE: ALEKSEI KISELEV	)	
DOCKET NO. 11-7214	)	**DECISION AND ORDER**

This matter comes before the Administrator following the issuance of a Notice of Intent on May 3, 2011. The Notice of Intent alleges that Aleksei Kiselev (hereinafter, Respondent) made false representations to Maine Office of Securities staff and, as a result, committed dishonest and unethical practices in violation of the Maine Uniform Securities Act, 32 M.R.S. §16412(4)(M)(2005). As set forth more fully below and based upon a review of the administrative record, I find that Staff has failed to meet its burden of proving Respondent violated 32 M.R.S. §16412(4)(M)(2005) and hereby Order the Notice of Intent issued in this matter on May 10, 2011 DISMISSED.

PROCEDURAL HISTORY[1]

Following the issuance of the Notice of Intent on May 3, 2011, Respondent filed a request for a hearing on June 1, 2011. I issued a letter on June 6, 2011 setting forth the purpose of the hearing; proposing hearing dates; and outlining certain prehearing actions required of the parties. That same day Respondent filed a motion to disqualify me as

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[1] Respondent, along with Respondents in a related administrative case, Office of Securities Case No. 11-7214-2, filed various court actions in both state and federal court alleging bias on the part of the decision maker. The procedural history set forth in this decision will be limited to that directly related to the administrative action.

hearing officer. Despite referencing a number of exhibits in his motion, Respondent neglected to include the exhibits. Accordingly, Staff was given additional time beyond the 14 days provided by Maine Office of Securities Rule 540 within which to respond. Staff's Opposition to the Motion to Disqualify was filed on June 24, 2011.

Although not permitted under Rule 540 absent prior authorization from the Administrator, Respondent emailed a reply to Staff's opposition on July 1, 2011 which was received at 6:52 p.m. after the close of business. The hard copy of the reply was received on July 7, 2011. I issued an Order Denying the Motion to Disqualify on July 12, 2011 noting that while a reply to opposition is not provided for in Rule 540, I had considered the reply in making my decision. [2]

Both parties made their prehearing submissions including identifying witnesses to be called and exhibits to be offered at hearing. A telephonic prehearing conference was held with counsel for both parties on August 10, 2011. The substance of the conference call was memorialized in a letter dated August 24, 2011 from me to the attorneys for the parties and set forth, among other things, the date for the commencement of the hearing, the specific issues to be addressed at the hearing, and the date for the prefiling of exhibits. The letter also confirmed that Attorney Goodman would be provided an opportunity at the beginning of the hearing to make a proffer in order to preserve arguments for appeal regarding the scope of the proceeding.

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[2] I denied the Respondent's motion on the grounds that I have no bias or prejudgment that would affect my ability to fairly decide this case on the evidence in the record.

The hearing commenced as scheduled on September 26, 2011 and ended that same day. The parties requested the opportunity to file written closing arguments which request was granted. Closing arguments were filed simultaneously on October 19, 2011.

Respondent immediately filed a Motion to Strike Staff's Closing Statement arguing that Staff's submission was untimely and, therefore, should not be considered. If the motion were to be denied, Respondent requested that I set a "show cause hearing to impose attorney's fees and costs upon the State for Defendant's (sic) filing of this Motion, the Defendant's (sic) closing argument, and additional attorney's fees for Staff's bad faith filing of its prior Motion to prevent Attorney Goodman to practice *pro hac vice*."[3]

Staff responded to the motion and I issued an Order denying the requested relief. In denying the motion I found that Staff's closing statement was filed with me electronically one minute before the deadline but emailed to the Respondent's counsel approximately 20 minutes later. I further found that Respondent was not prejudiced by the 20 minute delay particularly since he had until October 28th to file a reply. Finally, I denied the request for a show cause order noting the lack of any statutory authority to impose attorney's fees and costs. Written rebuttal arguments were filed simultaneously by the parties on October 28, 2011.

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[3] It is noted that Staff's motion regarding Attorney Goodman related to his representation of other Respondents in a related case, not his representation of Respondent, and concerned whether Attorney Goodman was authorized to practice law in Maine under the Maine Code of Professional Conduct in the representation of the respondents in that case. Staff raised the same issue with respect to Respondent in this case at the August prehearing conference, but withdrew any objection after information was provided by Attorney Goodman which showed satisfactorily that he met the Code's requirements with respect to. Respondent.

DISCUSSION

The issue to be decided in this case is whether or not Maine Office of Securities Staff met its burden of proving by a preponderance of the evidence[4] that Respondent committed dishonest practices in the securities industry by making misrepresentations to Office Staff. Staff asserts that Respondent wrote three checks to Polina Oksengorn over an eight-month period. Each check contained a reference in the memo line to "loan repayment." *Staff Exhibits 3, 4 and 5.*

Ms. Oksengorn is a client of North Atlantic Securities, a broker-dealer firm for which Respondent is an agent and part owner. *Staff Exhibit 1; Tr. At 31.* According to Staff once Respondent became aware that the Office was conducting an examination of North Atlantic Securities focused, in part, on loans from clients to persons associated with the firm, he denied that the checks in question represented a loan repayment by him. Rather Respondent told Staff the checks were for the refund of rent to Ms. Oksengorn from Respondent's father. Staff contends that Respondent changed his characterization of the payments in order to avoid possible repercussions were Staff to conclude he had accepted a loan from Ms. Oksengorn that was not permitted by the firm's Written Supervisory Procedures. The subsequent statements by Respondent to the Staff concerning the nature of the payments to Ms. Oksengorn constitute the misrepresentations that Staff allege make up the dishonest practices violation.

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[4] Staff's burden, in simple terms, is to prove that its version of the facts is more likely than not the correct version.

Respondent, on the other hand, argues that Staff failed to meet its burden of proof in that Staff presented insufficient evidence to prove there was a loan between Ms. Oksengorn and the Respondent. Much reliance is placed on the fact that Ms. Oksengorn is a client of the firm and not a client of the Respondent. As such, he asserts there could be no violation of the Written Supervisory Procedures even if there was a loan between Ms. Oksengorn and him. Additionally, Respondent notes that he believed the examination was routine and that he had no reason to be concerned that he may have violated any rule, regulation or Written Supervisory Procedures. Following this line of reasoning, Respondent argues that there was no motive to deceive the Staff.

Respondent explains the discrepancy between what appears on the memo line of some of the checks and the subsequent explanation to Staff as "normal human differences of minor details in recounting insignificant transactions from several years before." *Respondent Reply Memorandum at page 3.* Respondent argues that there is no proof in the record whatsoever that any loan existed between Ms. Oksengorn and him. Absent a loan and a motive, it is Respondent's view that Staff has failed to meet its burden.

It is undisputed that Respondent is an agent and 50% owner of North Atlantic Securities. *Tr. 25.* Respondent has been registered with North Atlantic Securities since 2002. He is registered with FINRA as a general securities principal and as a general securities supervisor and licensed in Maine as a representative of North Atlantic

Securities. *Snapshot Report Appended to Notice of Facts for Which Official Notice Will Be Taken at page 3.*[5]

Respondent testified that his role with North Atlantic Securities has been limited. His testimony is that he has never had any clients and has not received any compensation or monetary return from North Atlantic Securities. *Tr. 25-27.* In fact, Respondent testified that his role at North Atlantic was to provide him with "…a potential platform for my [Respondent's] international consulting business, maybe to explore private placement operations." *Tr. 58, l. 8-12.*

The core issue is whether Respondent attempted to deceive Staff regarding the transactions between him and his aunt, Polina Oksengorn. Dishonest and unethical practices are generally characterized by a lack of truth, trustworthiness, honesty or an inclination to mislead, lie, cheat or defraud. Staff must establish that Respondent's characterization of the payments to Ms. Oksengorn was dishonest and did not conform to accepted professional principles and practices. There must be sufficient evidence to establish that the initial representation of the transactions as loans was, in fact, true and the subsequent statements to Staff were false.

It is undisputed that Respondent signed two checks on April 19, 2009 each in the amount of $8,000 and each made payable to Ms. Oksengorn. It is also undisputed that both checks contained the following notation in the memo line: "loan repayment" and the

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[5] It is noted that as of July 26, 2011 Respondent's registration became inactive due to his failure to meet continuing education requirements. *Id.* Thus, unless and until Respondent completes the required continuing education, he is, in any event, precluded from engaging in securities related activities that otherwise require registration or licensure. *FINRA Rule 1250(a)(2)*

number for Ms. Oksengorn's brokerage account. Both checks were presented to Michael Dell'Olio for deposit into Ms. Oksengorn's brokerage account and both checks were returned for insufficient funds.

Subsequently, Respondent issued three additional checks. The first was issued on December 28, 2009 in the amount of $5,000 and was signed by Respondent's personal assistant. The memo line again included the brokerage account number and the notation "loan repayment." A second check was issued on January 25, 2010 in the amount of $5,000 and was also signed by Respondent's personal assistant. The memo line included the brokerage account number. The third check was issued May 26, 2010, in the amount of $5,000, was signed by Respondent's personal assistant, and included reference to the brokerage account number.

Respondent claims that the checks were not for a loan repayment. Rather, he testified that he was careless in putting loan repayment in the memo line on some of the checks. Respondent said he wrote loan repayment "without even thinking about it" and that he did not "think it was important." *Tr. 61, l. 16-25.* Both Respondent and Ms. Oksengorn unequivocally state that no loan has ever been given to Respondent by Ms. Oksengorn.

Staff, on the other hand, argues that the checks were loan repayments and that Respondent changed his rendition only after he became aware that Staff was making inquiries about the possible loan. In addition, Staff asserts that certain statements made by Respondent in his affidavit changed in his subsequent testimony once he had an opportunity to review the statement of his aunt.

A careful review of the record reveals only that Respondent may have been careless in his handling of his personal financial affairs involving Ms. Oksengorn. There is no evidence, aside from speculation and supposition, to support a conclusion that there was a loan made by Ms. Oksengorn. Staff appears to surmise that at some point Respondent borrowed "between $15,000 and $16,000" from Ms. Oksengorn. Yet the record is devoid of any evidence establishing a loan payment to Respondent such as evidence of a deposit from Ms. Oksengorn or a transfer of funds from one of her financial accounts into Respondent's accounts. Without some evidence that money came into Respondent's possession either directly from Ms. Oksengorn or indirectly at her direction, it is difficult to make a connection between the checks deposited into Ms. Oksengorn's brokerage account and a loan that both Respondent and his aunt consistently testify never occurred.

Staff simply has not proven by a preponderance of the evidence that a loan existed between Respondent and Ms. Oksengorn and Respondent then lied to Staff about the loan when later questioned about the transactions. To be sure there are some definite questions here. Inconsistencies regarding the amount of money returned for unused rental payments coupled with the explanation that Respondent simply did not pay close attention to the details of any financial transaction with his aunt raise more questions than answers. Respondent's admitted lack of concern and view that the familial transactions were "not important" is, at a minimum, curious. Indeed, as a best practice Respondent should be much more diligent about accurately characterizing the purposes for his financial transactions. Failure to adhere to such simple best practices, however, is not, in and of itself, an actionable violation of Maine's securities laws and rules.

At the end of the day, evidence supporting the conclusion that Ms. Oksengorn gave Respondent a loan and then Respondent lied to Staff by asserting money was repaid to Ms. Oksengorn for reimbursement for unused rental fees simply is not present. There is far more evidence in the record to support the conclusion that the financial transactions between Respondent and Ms. Oksengorn were, in fact, return of unused rental channeled through Respondent's client as an existing means for sending money from the Ukraine to the United States.

The discussion regarding this matter could end here but I would be remiss if I did not comment about the hearing and its effect upon my decision. Counsel for Mr. Kiselev – Andrew Goodman – acted in a manner with which I am not familiar. The transcript and audio recording show Mr. Goodman's lack of decorum and lack of respect for the process, opposing counsel or hearing officer. Mr. Goodman's antics made it more difficult for me to focus on the facts and often seemed to be an effort to incite or goad opposing counsel or me. As the hearing officer, however, it is my responsibility to look past such lawyer's actions, and instead base my decision on the facts presented in light of the applicable law. That is what I have endeavored to do here in making this decision. Rather than being viewed as a victory for those who act in a manner showing lack of respect for the process and those who participate in it, it is my hope that this decision confirms that our process works well even in the face of efforts to disrupt it.

FINDINGS OF FACT

1. Aleksei Kiselev (CRD #4592981) is an agent of North Atlantic Securities, LLC, ("North Atlantic Securities") (CRD #123435), a broker-dealer located in Saco, Maine.

2. As of July 26, 2011 Mr. Kiselev's registration with FINRA became inactive. Consequently, Kiselev may not engage in any activities as a registered agent and is prohibited by FINRA from performing any duties and functioning in any capacity requiring registration.

3. Mr. Kiselev received a wire transfer on April 14, 2009 into his personal checking account from a consulting client in the amount of $15,000. The payment detail indicated that the payment was "remuneration for consulting services."

4. Mr. Kiselev wrote two personal checks on April 18, 2009, each for $8,000, payable to Ms. Oksengorn. The memo line on the checks read "loan repayment." Both checks were deposited into Ms. Oksengorn's brokerage account with North Atlantic Securities.

5. The April 18, 2009 checks that were deposited into Ms. Oksengorn's brokerage account were returned for insufficient funds. Upon learning of the return of the checks, Ms. Oksengorn advised Mr. Kiselev to remit payment to her.

6. Over the course of the next year, Mr. Kiselev presented three additional checks for deposit into Ms. Oksengorn's brokerage account. Each check was in the amount of $5,000 and contained the number for Ms. Oksengorn's brokerage account in

the memo line. The first check was written on December 28, 2009 and included the phrase "loan repayment" in the memo line. The second check was written on January 25, 2010 and the third on May 26, 2010. All three of these checks were signed by Mr. Kiselev's personal assistant under his direction.

8. When questioned about the checks by Office of Securities Staff, Mr. Kiselev represented the checks as being the refund of rent paid upfront for an apartment Ms. Oksengorn rented for a period of six months at a monthly rental of $3,000.

9. Both Mr. Kiselev and Ms. Oksengorn testified that at no time has Ms. Oksengorn given any loan to Mr. Kiselev.

10. The inaccurate description by Mr. Kiselev on the checks of the financial transactions between Mr. Kiselev and Ms. Oksengorn resulted from carelessness and lack of appreciation for the importance of accurately describing the purpose of one's financial transactions.

11. Because there was no loan to Mr. Kiselev from his aunt, the subsequent explanation of the financial transactions provided to Staff does not constitute dishonest and unethical practices but, rather, imprudent judgment on the part of Mr. Kiselev in writing notations on checks to his aunt without regard for the consequences of his actions.

CONCLUSIONS OF LAW

1. The Securities Administrator may take disciplinary action against a licensee who engages in "unlawful, dishonest or unethical practices." 32 M.R.S. § 16412(4)(M).

2. The inaccurate and ill advised recording of the financial transactions between Respondent and Ms. Oksengorn, without proof that there was, in fact, a loan between Respondent and Ms. Oksengorn, is insufficient evidence to establish a violation of 32 M.R.S. § 16412(4)(M).

3. Maine Office of Securities Staff has failed to meet its burden of proving the allegations contained in the Notice of Intent by a preponderance of the evidence.

ORDER

NOW, THEREFORE, it is ORDERED that the matter of In Re: Alexei Kiselev, Maine Office of Securities Docket Number 11-7214 shall be and hereby is DISMISSED.

Any party may obtain judicial review of this order in the Kennebec County Superior Court by filing a petition within thirty (30) calendar days after receipt of the order, in accordance with 5 M.R.S.A. §§ 11001-11008, 32 M.R.S.A. § 16609, and Rule 80C of the Maine Rules of Civil Procedure.

DATED: November 9, 2011

Judith M. Shaw

Judith M. Shaw
Securities Administrator